

**DOKA CANADA, Ltd./Ltee – General Terms and Conditions – Version Québec December 11, 2023**

This Agreement, made between Doka Canada Ltd./Ltee (hereinafter DOKA) and Customer for rental and/or purchase of products, documents, services, as evidenced by the signatures of the parties hereto as set forth on attached and executed agreement cover page, is subject to the following Terms and Conditions:

- 1. Definitions.** The following terms have the meaning set forth below each time they are used herein: **“Customer”** means the person as indicated on Order procuring products, documents or services of Doka by an Order; **“DOKA”** means Doka Canada Ltd./Ltee, a legally constituted corporation located at 300-95 ST Foundry, City of Moncton, Province of New Brunswick, E1C5H7, which is the provider of products, documents and services contemplated in the Order; **“Order”** refers to the purchase or rental order placed by Customer, forming part of the Agreement, to which these Terms and Conditions apply; **“Person”** means an individual, partnership, association, corporation or personal representative; **“Terms and Conditions”** means these general terms and conditions to governing this Agreement.
- 2. General.** All typographical or clerical errors are subject to correction. Any resulting agreement is for the benefit of the parties hereto and not for any other individual or entity. All dollar amounts referenced shall be in the currency of Canada, unless otherwise agreed to in writing by the parties.
- 3. Payment Terms/Service Charges.** Payments for rented products are due and payable within thirty (30) days of invoice date. Payments for purchased products are due and payable within fifteen (15) days of invoice date. A service charge of one and one-half percent (1.5%) per month, simple interest will be imposed on the unpaid balance of overdue accounts. Should this charge exceed that allowed by governing law, the maximum rate allowed by law shall apply. Client shall not withhold retainage from payments.
- 4. Credit Approval.** All quotations and contracts are subject to customer credit check and credit approval by DOKA.
- 5. Breach by Customer.** If Customer breaches any terms of this Agreement, becomes insolvent, or is placed in receivership, or if a petition in bankruptcy is filed by or against Customer, or ceases or threatens to cease business activities, DOKA may elect any or all of the following remedies: (i) immediately terminate this Agreement without any liability to the Customer, (ii) demand assurance of performance, (iii) recover immediate possession of any leased Products, (iv) suspend its performance under the Agreement, (v) notify any owner, general contractor, or bonding company of Customer's default, (vi) declare a cross default of any other agreement with Customer and apply any funds from other agreements to any deficiencies hereunder, (vii) exercise its hypothecary rights, and/or (viii) exercise all other remedies available at law or under the Agreement.
- 6. Consequential Damages.** In no event, shall DOKA, be liable to Customer on a claim, action or application of any kind, including, but not limited to, negligence, for any interruption of operations, loss of anticipated profits, or for special, incidental, contingent, or consequential damages. In no event, shall DOKA be liable for any claim, application or action against the Customer by any other party. In no event, shall DOKA be liable for any delay or breach of these Terms and Conditions by DOKA due to causes beyond the control of DOKA, including but not limited to force majeure, labour difficulties, strikes or transport delays.  
For the purposes of Article 5, in addition to the definitions contained in Article 1 of the Terms and Conditions, **“DOKA”** shall be construed to include its subsidiaries, affiliates and their employees, , directors, officers, shareholders, agents, representatives, subcontractors, suppliers, assigns or assignees; and **“Customer”** shall be construed to include its subsidiaries, affiliates and their employees, directors, officers, shareholders, agents, representatives, subcontractors, suppliers, assigns or assignee
- 7. Price List.** Prices quoted for DOKA products are based on the most current price list (“Price List”). Details of the relevant prices can be provided to Customer upon request and are considered part of this Agreement. Rental charges shall be based on product prices contained in the Price List and shall be maintained and updated during the term of the project (as set forth on the Agreement cover page), but not to exceed 12 months. Prices for DOKA sale items shall be those in effect at the time of shipment. Custom steel fabrications may be subject to price escalation which terms are included in this Agreement or can be provided to Customer upon request.
- 8. Construction Lien.** DOKA hereby informs the Customer that, upon signature of the Agreement, it may issue a written notice of the contract to the owner of the property in relation to which DOKA has provided products, documents or services, at its sole discretion, and therefore DOKA may register a *legal hypothec in favor of persons having taken part in the construction or renovation of an immovable*, on the land registry of Québec.
- 9. Freight and Taxes.** Unless noted otherwise in the Agreement, all prices are quoted F.O.B. shipping point and exclude any applicable federal, provincial, or municipal taxes. Such taxes will be billed separately in accordance with applicable federal, provincial or municipal tax laws or regulations. All transportation charges to and from the DOKA warehouse closest to the customer are to be paid by Customer. All carriers shall be agents of Customer.
- 10. Indemnity.** Customer agrees to defend, indemnify and hold harmless DOKA against any loss or damages incurred by DOKA for any and all claims arising from or connected to the use of the purchased or rented products by Customer, its agents, employees, assigns, or any subcontractors, except where such claims arise or are caused by as a result of DOKA's sole gross negligence. Damages as referred to herein shall include any monetary damages, court costs, attorney's or legal fees and any other costs or damages suffered by DOKA arising from, or in connection with, claims made as described in this paragraph.
- 11. Layout Drawings.** Unless noted otherwise in the Agreement, formwork layout drawings (for erection of the equipment and the typical use at Customer's project) are not included. Should such drawings be requested, they will be billed at a rate of \$150.00 per hour. Unless noted otherwise, layout drawings will be based on CAN/CSA design standards. Any layout drawings furnished by DOKA to Customer are provided to conceptually illustrate the assembly of DOKA's products only. Such Layout Drawings are not intended to be fully directive nor cover engineering details on DOKA's products, or equipment or material not furnished by DOKA, or the interconnection therewith. DOKA does not control assembly or procedures at the project site, or the grade or quality of materials or equipment supplied by third parties. It is the responsibility of Customer to integrate DOKA's drawings into composite drawings suitably complete for construction purposes consistent with safe practice and overall project objectives. Drawings stamped by a licensed professional engineer (member in good standing of his provincial professional order) are not included. If Customer requests drawings for standard application of standard products to be reviewed and stamped by a licensed professional engineer, the charge for this service is \$800.00 per sheet. Any additional engineering services or calculations will be billed at \$200.00/hour per day (up to 8 hours) and at \$300.00/hour for overtime hours.
- 12. Modification, Rescission, and Cancellation.** The terms of this Agreement may not be modified or rescinded except in writing signed by each party. A waiver by DOKA of the requirements of this section with respect to any modification of any terms shall not operate to preclude DOKA from asserting this provision with respect to any other term. The Agreement may not be cancelled or terminated except upon payment of reasonable charges for the work performed to that date.
- 13. Shipment.** Time for shipment and delivery of services is approximate and is based upon prompt receipt from Customer of all necessary information and approval of drawings. DOKA shall not be liable to Customer for any loss, damage or delay due to any cause beyond DOKA's reasonable control, including, without limitation, labor troubles, fire, governmental act, regulation or request, delay in transportation and inability to obtain labor, fuel, power, materials, components or manufacturing facilities. In the event of such delays, the shipping date shall be extended and/or DOKA can suspend all shipping. Customer will be responsible for any loading, unloading and waiting time at the project site.
- 14. Force Majeur. (a)** If either DOKA or the Customer (hereafter called a **“party”**) provides evidence satisfactory to the other that its performance of any of its obligations under this Agreement (other than the payment of amounts owing to DOKA) is prevented by reason of any event or combination of events beyond its reasonable control (hereafter called an **“Event”** or **“Events”**) as provided below, it shall be entitled to relief from performing each such obligation under this Agreement for such period as the Event or combination of Events continues to prevent performance.  
**(b)** Neither party shall be entitled to claim relief in respect of any period during which it could have complied with any obligation (or any part thereof) by using reasonable commercial efforts to avoid, overcome or minimize wholly or partly the effects of the Event or combination of Events.  
**(c)** In order for an Event to be beyond the reasonable control of a party, the Event must result directly from an act of God; act of war (whether or not formally declared); foreign invasion or act of foreign enemies; riot; civil strife; act of terrorism (whether domestic or foreign); embargo; governmental rule, regulation or decree; shortage of gas, electricity or other fuel; natural disaster such as earthquake, flood, fire, hurricane, tornado, or other inclement weather; strike, lockout, or other labour disturbance or the shortage or unavailability of labour or materials; loss of data due to power failures or the unavailability of accessing information storage or retrieval systems resulting from third party (hacker) actions; changes in laws including government regulations; or the failure of any third party supplier, contractor or subcontractor to perform its or their obligations or contractual commitments; or any other events or circumstances not within the reasonable control of the party affected, whether similar or dissimilar to any of the foregoing and shall include, without limitation, a declared pandemic by the World Health Organization.  
**(d)** No party will be liable for nonperformance of any of its obligations under the Agreement (other than the payment of amounts owing to DOKA) if its nonperformance was due to an Event and: (i) such Event is beyond the nonperforming party's reasonable control; and (ii) occurs without the nonperforming party's fault or negligence; and (iii) is not caused directly or indirectly by the nonperforming party; and (iv) could not have been prevented or avoided by the nonperforming party's reasonable diligence; and (v) notwithstanding its reasonable commercial efforts to attempt to perform such obligations (other than the payment of amounts owing to DOKA), the nonperforming party was not able to avoid, overcome or minimize wholly or partly the effects of the Event or combination of Events.  
**(e)** Upon occurrence of an Event, the non-performing party shall promptly notify the other party that an Event has occurred, and its anticipated effect on performance, including its expected duration. The non-performing party shall furnish the other party with detailed written periodic reports regarding the progress of the Event. The non-performing party shall use reasonable diligence to minimize damages and to resume performance.  
**(f)** If an Event continues for more than 180 consecutive days, then the other party (but not the nonperforming party) may terminate this Agreement upon written notice to the nonperforming party.  
**(g)** Notwithstanding the generality of the foregoing, nothing in these General Terms and Conditions operates to excuse either party from the prompt payment of amounts owing under the Agreement, nor will a lack of financial resources or financial ability on the part of either party be or be deemed to be an Event, including (without limitation) any bankruptcy, insolvency or other creditor protection action taken by or against either party.
- 15. Acceptance of Delivery.** A bill of lading or delivery shall accompany each delivery of equipment. Such bill of lading or delivery must be signed for by an authorized representative of Customer or Customer's carrier upon receipt of delivery of equipment. DOKA shall not be responsible for the condition of any equipment delivered or any discrepancies between the quantities listed on the bill of lading or delivery and actual quantities received unless Customer notifies DOKA in writing within 24 hours after actual or constructive receipt of delivery. Customer's failure to notify DOKA in writing in such 24 hour period shall constitute a waiver of every claim or demand concerning the discrepancy in quantities or condition of any equipment delivered and Customer shall be deemed to have unconditionally accepted equipment.
- 16. Withholding/Backcharges.** Customer may not backcharge or withhold any monies from payments due hereunder as a result of alleged failure of materials, goods and services represented to fully meet the requirements of the plans and specifications unless it first notifies DOKA in writing and the withholding or backcharge is authorized by DOKA in writing. Withholdings or backcharges will not delay the due date of payments for sums not withheld or backcharged pursuant to this section.

**Customer Initials:** \_\_\_\_\_

**17. Warranties.** DOKA expressly warrants to Customer that, with respect to products fabricated by DOKA, as of the date of shipment (a) the products will comply with the description set forth herein and (b) that such products will be of good workmanship and quality and free from defects in material and workmanship under normal use and service. If any inherent defects in design, workmanship or materials purchased or rented hereunder shall be discovered by Customer and Customer gives DOKA prompt notice of such defects, DOKA shall, at its sole discretion, either repair or replace such items at its expense, F.O.B. DOKA's warehouse. The aforementioned repairs by DOKA shall constitute the sole remedy to Customer and the sole liability of DOKA whether on warranty, contract or negligence. DOKA shall not be liable for any other costs or damages. Customer shall make no repairs or alterations to the products without the express written consent of DOKA. These warranties shall not apply if the products have been subjected to other than normal and proper installation, operation, and maintenance or to unauthorized repair or alterations. With respect to components and parts not fabricated by DOKA, the warranty obligation of DOKA shall, in all respects, conform and be limited to the warranty actually extended to DOKA by its supplier. Except for the foregoing warranties, there are no warranties, express or implied, including, but not limited to, warranties of merchantability and fitness for a particular purpose or use not specified herein, respecting this agreement or products or equipment purchased or rented hereunder.

**18. Enforcement of Agreement.** In the event it becomes necessary for DOKA to engage attorneys to enforce compliance with any of the terms and conditions herein provided, Customer agrees to pay all expenses, costs and reasonable attorney's fees incurred by DOKA in connection with such enforcement. Any waiver by DOKA of a Customer default or of enforcement of a Contract provision shall not preclude DOKA from subsequently demanding performance by Customer or enforcing any terms of this Agreement.

**19. Confidentiality.** Customer shall keep the existence of any and all terms and information referenced in this Agreement as well as trade and company secrets strictly confidential, and, in perpetuity, shall not disclose to any third party any of the confidential information. Customer shall take reasonable measures to protect the secrecy of and avoid disclosure or use of the Confidential Information of the other party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under the Agreement to have any such Confidential Information. Each party is authorized to disclose the Confidential Information of the other party solely to employees that are informed of its confidential nature and directed to treat the Confidential Information confidentially and not to use it other than in connection with the terms of the Agreement. The parties shall oblige their employees and agents working for them to comply with the obligations set out in this Article.

**20. Product Rental.** Rental rate(s)/charges shall be as indicated in this Agreement and are quoted as a percentage of Price List for a 28-day rental period. Rental of all items start on date of delivery to carrier or Customer, and end on the date of receipt of return at DOKA's warehouse. If no warehouse was determined in the Agreement, then the warehouse is the warehouse that lies closest to the site to which the object was delivered. The minimum rental period is 28 days. All Rentals after the twenty-eight (28) days minimum rental charge are charged at a daily rate based on the agreed rental rate. DOKA is hereby authorized and empowered to correct evident errors in the Agreement, to compute and insert prices, if omitted or incorrect, or select and determine the quantities, size and kinds of rented items if not specified in the Agreement and insert the specifications thereof into this Agreement, all with the same force and effect as if originally set forth herein. All rental products are subject to availability and are offered with the understanding that previously used equipment in good working condition and in conformity with DOKA's quality standards for used equipment will be supplied. In no event shall Customer remove, or cause or permit to be removed, the rented products to any location other than the project site. The Customer is not entitled to sublease or lend rental products or parts of the rental products in any other ways to third parties without the prior consent of DOKA. Breach of this provision shall be deemed a material breach of the terms of this Agreement.

**21. Risk of Damage and Loss.** The Customer shall bear the risk of any damage to or loss of the rented products during the entire term as well as during transit from and to DOKA. If the rented products are lost or considerably damaged, DOKA shall be entitled to demand compensation for the amount of the then current Price List of such products. Furthermore, in the event that such products are damaged, DOKA has the option of demanding either compensation for the costs of repair or for the loss in value of such products in the amount of the then current Price List. The Customer shall also bear the risks of using rented products.

**22. Field Service.** Upon request, DOKA can provide a professional full-time site service technician to train Customer's staff in the use of the formwork and to oversee the assembly, setting and stripping process. The cost for a professional site supervisor is \$1,000 per day (up to 8 hours) plus all travel cost and accommodation expenses. The overtime rate is \$ 187.50 per hour.

**23. Title.** DOKA grants no right, title, or interest in or to the rented products, other than the right to the possession and use of the same in accordance with this Agreement, and DOKA shall remain sole owner of such rights, titles and interest in the rented products, even after exercise by Customer of the option to purchase, until the entire purchase price is paid. Customer agrees to permit DOKA or its agents, during work hours, to view and inspect all products supplied and rented pursuant to this Agreement, at any project site of Customer. Customer shall comply with and conform to all laws and regulations related to the possession, use or maintenance of such products, and hold DOKA harmless against actual or asserted violations thereof, and pay all taxes and other public charges against or upon the possession, use or rental of the equipment during the term hereof promptly when due. Customer represents and warrants to DOKA that Customer is solvent. DOKA retains a security interest in the purchased or rented products, including any and all proceeds therefrom and any related or ancillary parts or attachments, to secure payment of the price and all other indebtedness and obligations that Customer now and in the future owes to DOKA. Customer shall take all actions that DOKA requests to perfect, and to obtain and maintain first priority of, that security interest, and Customer shall pay, or reimburse DOKA for, all fees, taxes and other costs that are incurred in connection with those actions. DOKA may file a financing statement, fixture filing or similar registration with respect to the equipment at anytime, including, without limitation, a purchase money security interest. To the extent permitted by law, Customer waives requirement of being provided with a copy of any financing or verification statement or renewal thereof.

**24. Quotation Estimate.** Unless noted otherwise, estimated price quotations are based on information available at the time of the signature of the Agreement. Actual product layouts and field requirements will determine the specific quantities of materials shipped and may result in billing that is higher or lower than the figures indicated in the Agreement.

**25. Additional Materials.** In the event additional material is required to be shipped to the Customer, the additional material shall be covered by the same Terms and Conditions, except that the prices charged will be those current at time of shipment of the additional material. Delivery dates of additional material cannot be guaranteed and Customer will hold DOKA harmless in the event it is unable to supply such added material when requested.

**26. Return of Equipment.** Customer shall provide seven (7) days notice to DOKA before the return of rented products. All arrangements to be made for the return of equipment are the responsibility of Customer. All products rented shall be returned to DOKA in the same condition as delivered to Customer, except for normal wear and tear, and, in the case of forming panels, cleaned, treated with a release agent and ready for use. Equipment, including formwork panels pre-assembled by DOKA, must be returned completely disassembled. Customer shall pay for any items not returned, at the prices indicated on the current Price List. The cost of cleaning, repairing or replacing equipment damaged by drilling, puncturing, bending, cutting or by other than careful use, will be charged to the Customer at prevailing prices.

**27. Repairs and replacement.** Damaged and/or missing equipment will be identified by DOKA upon return and grading of such items. The Customer will be notified in writing about repairs and replacements necessary as well the related cost. All repairs and replacements shall be in accordance with the applicable DOKA quality standards for same in effect at the time of the repair or replacement. Customer should immediately notify DOKA about parts of the rental products that are lost or have become useless or damaged during the rental period due to use by the Customer, as soon as the knowledge of same is obtained.

**28. Re-sorting, Assembly/Disassembly and Destroyed products.** Sorting of commingled returns of rental products and assembly/disassembly work needed to rebuild components to "standard as-shipped condition" will be invoiced to the Customer at the standard shop service billing rate, as indicated at Article 28. Products graded as "destroyed" are considered damaged beyond repair and the Customer will be invoiced at the products' Price List plus costs of disposal.

**29. Shop Service Billing Rates.** The standard rate billed to the Customer for shop services is \$65 per hour, for welding services \$125 per hour.

**30. Safety Anchorages/User Information.** Provisions built-in to formwork for attachment of fall protection equipment is designed to meet OH&S Act regulations. It is the Customer's responsibility to verify adequacy of safety harnesses, hooks, straps, etc., which are not of DOKA manufacture. Under no circumstances should safety anchorages built-in to formwork be used for lifting the formwork. User information must be followed for all products. If customer does not possess such User Information, it is the customer's responsibility to request it from DOKA with seven days notice.

**31. Notices.** Notices, consents and other communications to DOKA provided for herein shall be in writing and effective only upon actual delivery to DOKA at its office at 12673 Coleraine Dr., Bolton, ON L7E 3B5

**32. Internal Conflicts in Agreement and Severability.** Should any conflicts occur between any other sections of this Agreement and these Terms and Conditions, the other sections of this Agreement shall govern. If any term or provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason whatsoever, that term or provision shall be modified only to the extent necessary to be enforced, such term or provision shall be enforced to the maximum extent permitted by law, and the validity of the remainder of this Agreement shall not be adversely affected.

**33. Language.** The parties hereby acknowledge that they have required these terms and conditions and all documents attached hereto be drawn up in the English language. *Les parties reconnaissent avoir demandé que les présentes conditions et tous les documents y afférents soient rédigés en langue anglaise.*

**34. Complete Agreement and Precedence.** This Agreement contains the complete and entire agreement between the parties and shall be effective from the date of acceptance by DOKA, as signified by the signature hereto of an authorized manager of DOKA. This Agreement and the present Terms and Conditions to which the Agreement is subject, shall take precedence over all written, negotiated representations, agreements in principle, prior commitments and communications between the two (2) parties, whether oral or written and the these Terms and Conditions remain the overriding Agreement between the two parties. This Agreement shall not be amended or altered in any manner unless amendment or alteration is agreed to in writing by both parties and executed by an authorized manager of each. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Headings and subheadings are for organization and ease of reading and do not import any meaning to the provision(s) they head.

**35. Assignment.** Customer cannot assign or transfer its rights and obligations hereunder, or in any other manner delegate its performance of its obligations hereunder, without DOKA's prior written consent. Any other form of assignment is prohibited and is to be null and void. DOKA reserves the right, by means of a notice sent ten (10) days in advance to the Customer, to assign the Agreement and the rights and obligations attached thereto to a parent company, a division, or subsidiary of DOKA.

**36. Applicable Law and Jurisdiction.** This Agreement shall be governed by and construed according to the laws of the Province of Québec and of Canada without giving effect to conflicts of laws rules, and either party may bring any action that arises out of or relates to the Agreement in any court in the jurisdictions of Montreal or Longueuil, Québec, that has competence over the subject matter.

**Customer Initials:** \_\_\_\_\_